MOTION FILED
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No. 91-1993

IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

CONTINENTAL CASUALTY COMPANY,
Petitioner,
v.
FIBREBOARD CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

MOTION TO GRANT, VACATE AND REMAND ON GROUNDS OF MOOTNESS

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A petition for a writ of certiorari to the U.S. Court of Appeals for the Ninth Circuit is currently pending in this case. The sole issue raised in that petition is the correctness of the Ninth Circuit's decision to apply Texas law in determining whether petitioner Continental Casualty was obliged to indemnify respondent Fibreboard Corp. for punitive damages awarded in one Texas civil case—*Cimino v. Raymark Indus., Inc.*, 86-0456-CA (E.D. Tex.). *See* Pet. App. 28a (specifying the relevant rulings that the Ninth Circuit affirmed).

That issue is now moot, because of a settlement reached in *Cimino* between petitioner Continental and the plaintiffs. In that settlement, Continental agreed to make various specified payments directly to the *Cimino* plaintiffs, who withdrew all other claims against Fibreboard

and Continental. This settlement was approved on September 25, 1992. The effect of this settlement is to moot the question of Continental's liability to Fibreboard for punitive damages previously awarded in *Cimino*.

It follows that the appropriate action for this Court to take at this time would be to grant a writ of certiorari, vacate the decision below, and remand for dismissal of this case, under *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950). *See, e.g., City Gas Co. of Florida v. Consolidated Gas Co. of Florida, Inc.*, 111 S. Ct. 1300 (1991); 13A C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 3533.10, at 434 n.31 (citing examples).

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